

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
WINCHESTER DIVISION**

BELINDA BUSH-FRAZIER,

Plaintiff,

v.

**PENNSYLVANIA LIFE INSURANCE
COMPANY,**

Defendant.

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NO. _____

JURY DEMAND

NOTICE OF REMOVAL

Defendant Pennsylvania Life Insurance Company ("Pennsylvania Life") removes this action to this Court pursuant to 28 U.S.C. § 1441(a), and in support thereof, states as follows:

1. The above-styled cause of action was commenced on September 19, 2008, in the Circuit Court for Bedford County, Tennessee, Case No. 11668, wherein Belinda Bush-Frazier is the Plaintiff and Pennsylvania Life is the Defendant.

2. On September 29, 2008, Pennsylvania Life was served with the Summons and a copy of the Complaint, both of which are attached hereto as **Exhibit 1**.

3. The Complaint asserts that Pennsylvania Life improperly denied disability insurance coverage to the Plaintiff and seeks damages of \$250,000 as a result.

4. As alleged in the Complaint, Plaintiff is an individual residing in Bedford County, Tennessee.

5. Defendant Pennsylvania Life is a Pennsylvania organization whose principal place of business is in Florida.

6. This is a civil action over which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), because Plaintiff and Defendant have complete diversity of citizenship and the amount in controversy exceeds \$75,000.

7. This Notice of Removal is being filed within thirty (30) days after Pennsylvania Life received notice of the Complaint and is thus timely filed under 28 U.S.C. § 1446(b).

8. A copy of this Notice of Removal will be filed with the Clerk of the Circuit Court for Bedford County, Tennessee, and served upon Plaintiff's counsel in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, Defendant gives notice of removal from the Circuit Court for Bedford County, Tennessee, to the United States District Court for the Eastern District of Tennessee, Winchester Division.

Dated this 23rd day of October, 2008.

Respectfully submitted,

FROST BROWN TODD LLC

/s/ John R. Wingo

John R. Wingo, BPR No. 16955

424 Church Street, Suite 1600

Nashville, TN 37219

(615) 251-5550 (615) 251-5551 facsimile

jwingo@fbtlaw.com

Attorney for Pennsylvania Life Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via facsimile and/or U. S. Mail, postage prepaid, on this 23rd day of October, 2008, on:

C. Kelly Wilson
Wilson & Henegar
200 E. Depot Street
P. O. Box 103
Shelbyville, TN 37162
(931) 684-5424 fax: (931) 684-6442

/s/ John R. Wingo_____

NSHLibrary 0001762.0562185 78112v1

IN THE CIRCUIT COURT OF BEDFORD COUNTY, TENNESSEE

BELINDA BUSH - FRAZIER,

Plaintiff,

VS.

NO. _____
JURY DEMANDPENNSYLVANIA LIFE
INSURANCE COMPANY

Defendant.

COMPLAINT

Comes now the plaintiff, Belinda Bush - Frazier, and would show unto the Court as follows:

1. The plaintiff, Belinda Bush - Frazier, is, and at all times relevant for the purposes of this complaint was, a resident of Bedford, County, Tennessee.
2. The defendant, Pennsylvania Life Insurance Company is, and at all times relevant for the purposes of this complaint, a corporation with its principal place of business at Buffalo, New York, authorized to do insurance business in the state of Tennessee, and doing business in the State of Tennessee.
3. That at all times herein mentioned and at the time of the accident and injuries herein described, the plaintiff was, by virtue of the payment of the premium to the defendant, insured by Group Policy No. E475442320/P047497150 provided by Pennsylvania Life Insurance Company. The rider attached to this policy provided disability benefits when the insured became totally disabled as a result of covered accidents other than automobile, truck or bus accidents.

Exhibit 1

4. On or about September 13, 2004, while plaintiff was carrying 5 gallon buckets of oil, plaintiff fell and significantly injured her low back region. As a direct and proximate result of said fall and injury, the plaintiff suffered severe pain and was bedridden for most of her treatment time, all of which totally disabled the plaintiff under the terms of said group plan and policy.

5. On September 14, 2004, plaintiff saw her family doctor in Shelbyville, Dr. Lawrence Schull, MD. Plaintiff was treated and referred to a pain program, however she was unable to obtain an office visit at that time. Plaintiff made an appointment at the Back Pain Institute in Nashville and was seen by Dr. Helmut Harnisch, MD., PhD. on October 25, 2004. It is the opinion of Dr. Harnisch that Plaintiff sustained her current disabling condition as a direct result of her accident on September 13, 2004 and not from a pre-existing condition. Plaintiff remained in the care of Dr. Harnisch until March 23, 2006 and then following in a private clinic for pain control and stabilization for her condition. Please see attached Exhibit 1 for the report of Dr. Harnisch.

6. The Plaintiff filed her claim for disability to Defendant after having been deemed totally disabled and subject to all conditions provided by the above named plan and policy of insurance.

7. The Defendant denied Plaintiff's initial claim in two letters dated on March 28, 2007 and May 17, 2007. In said letters, Defendant claimed to have received no evidence that Plaintiff's accident on September 13, 2004 was responsible for her disabling condition. Plaintiff answered by providing aforementioned Exhibit 1 to Defendant. Defendant acknowledged receipt of said exhibit in letter dated April 7, 2008.

In said letter, Defendant denies Plaintiff's claim and insists on further evaluation of Plaintiff's present condition.

8. The Defendant has refused to pay disability benefits following the Plaintiff's demand for same, despite the fact that same are justly due and owing to the Plaintiff. Said neglect and refusal to pay said benefits is not in good faith, and the failure to pay said benefits has inflicted additional expense, loss, and injury upon the plaintiff, entitling the Plaintiff to the bad faith penalty provided in TCA § 56-7-105, in the amount of 25% of the principal amount of the insurance.

9. That Defendant has breached the contract by failing to provide the benefits for which the Plaintiff is entitled.

10. The Plaintiff has suffered and will continue to suffer damages as a result of the breach by the Defendants.

WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT AGAINST THE DEFENDANTS:

1. For breach of contract and the Plaintiff be awarded damages consistent with her damages in the amount of two hundred fifty thousand (\$250,000.00) dollars.


2. Damages for willful refusal to pay benefits including but not limited to a bad faith penalty.

3. That this cause be tried to before a jury.

4. That the costs of this cause be taxed against the defendants.

5. That Plaintiff be awarded such other, further and general relief to which she may be entitled.

RESPECTFULLY SUBMITTED:



C. KELLY WILSON

P. O. Box 103
200 E. Depot Street
Shelbyville, TN 37162
(931) 684-6424
Bar No. 17404

I am surety for costs not to exceed \$500.00.



C. KELLY WILSON

Filed this 19 day of Sept 2008
Time 9:35 a m
THOMAS C. SMITH, CLERK
CIRCUIT & GENERAL SESSIONS
BEDFORD COUNTY, TENNESSEE
AmChambers

The Harnisch Wellness Clinics, Inc.
Family Medicine
Helmut Kurt Harnisch, MD, Ph.D.
DABFE ABFM ABDA
 Functional Endocrinology Age Management Medicine
 Nutritional Consultant
 Chronic Pain Control
American Board of Disability Analysts
Senior Disability Analyst and Diplomate
 5548 Franklin Road – Suite 203
 Nashville, TN. 37220 Tel. 615-309-8111 or 615-376-7986
 Fax 615-309-8820 or 615-376-9340
 DEA BH 570 151 8

To Whom it may concern:

RE: Belinda Bush

Mrs. Bush-Frazier has been our patient since 10/04, when we treated her for back problems.

Prior to 9/13/04, Belinda had no back problems and worked every day.

On 9/13/04 she fell at work, significantly injured her low back region. On 9/14/04 she saw her family doctor in Shelbyville, Dr. Lawrence Schull, MD.

She was treated by him with a complete work-up and then referred to a pain program; however she was unable to obtain an office visit at that time.

She found out about our clinic (Back Pain Institute), she made an appointment and was seen on 10/25/04.

She was last seen in the back pain program on 3/23/06 and then followed in our private clinic for pain control and stabilization of her condition.

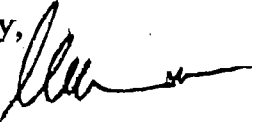
It is my professional opinion that Mrs. Bush-Frazier was doing well prior to the fall on 9/13/04 and did not require any medical attention for her back condition.

However since the injury and fall, she has developed severe low back problems as clearly outlined on the MRI report and was bedridden for most of the treatment time, unable to work and in severe pain.

It is my further opinion the fall and subsequent injury is the cause of her present condition and it not merely degenerative in nature.

Thank you for allowing me to assist in the clearing of this matter.

Sincerely,



Helmut Kurt Harnisch, MD., Ph.D.

3/3/08

to Wilson. Now on

931.694. ~~6442~~ ~~6442~~
 6442

Exhibit 1

STATE OF TENNESSEE 17 TH JUDICIAL DISTRICT CIRCUIT COURT	BEDFORD COUNTY SUMMONS	CASE FILE NUMBER: <div style="font-size: 1.5em; margin-top: 10px;">11668</div>														
PLAINTIFF: BELINDA BUSH FRAZIER		DEFENDANT: PENNSYLVANIA LIFE INSURANCE COMPANY														
TO: (NAME AND ADDRESS OF DEFENDANT) PENNSYLVANIA LIFE INSURANCE Serve: Commissioner of Insurance	METHOD OF SERVICE: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr><td><input type="checkbox"/></td><td>CERTIFIED MAIL</td></tr> <tr><td><input type="checkbox"/></td><td>BEDFORD COUNTY SHERIFF</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>COMM. OF INSURANCE</td></tr> <tr><td><input type="checkbox"/></td><td>SECRETARY OF STATE</td></tr> <tr><td><input type="checkbox"/></td><td>OUT OF COUNTY SHERIFF</td></tr> <tr><td><input type="checkbox"/></td><td>PRIVATE PROCESS SERVER</td></tr> <tr><td><input type="checkbox"/></td><td>OTHER</td></tr> </table>		<input type="checkbox"/>	CERTIFIED MAIL	<input type="checkbox"/>	BEDFORD COUNTY SHERIFF	<input checked="" type="checkbox"/>	COMM. OF INSURANCE	<input type="checkbox"/>	SECRETARY OF STATE	<input type="checkbox"/>	OUT OF COUNTY SHERIFF	<input type="checkbox"/>	PRIVATE PROCESS SERVER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	CERTIFIED MAIL															
<input type="checkbox"/>	BEDFORD COUNTY SHERIFF															
<input checked="" type="checkbox"/>	COMM. OF INSURANCE															
<input type="checkbox"/>	SECRETARY OF STATE															
<input type="checkbox"/>	OUT OF COUNTY SHERIFF															
<input type="checkbox"/>	PRIVATE PROCESS SERVER															
<input type="checkbox"/>	OTHER															
YOU ARE SUMMONED TO DEFEND A CIVIL ACTION FILED AGAINST YOU IN THE CIRCUIT COURT, BEDFORD COUNTY, TENNESSEE. YOUR DEFENSE MUST BE MADE WITHIN THIRTY (30) DAYS FROM THE DATE THIS SUMMONS IS SERVED UPON YOU. YOU MUST FILE YOUR DEFENSE WITH THE CLERK OF THE CIRCUIT COURT AND SEND A COPY TO THE PLAINTIFF'S ATTORNEY AT THE ADDRESS LISTED BELOW. IF YOU FAIL TO DEFEND THIS ACTION BY THE ABOVE DATE, JUDGMENT BY DEFAULT CAN BE RENDERED AGAINST YOU FOR THE RELIEF SOUGHT IN THE COMPLAINT.																
ATTORNEY FOR THE PLAINTIFF OR PLAINTIFF IF FILING PRO SE; NAME, ADDRESS & TELEPHONE NUMBER: <div style="text-align: center; margin-top: 20px;"> C. KELLY WILSON P O BOX 103 200 E. DEPOT STREET SHELBYVILLE, TN 37162 (931) 684-5424 </div>	FILED, ISSUED & ATTESTED <div style="text-align: center; font-size: 1.5em; margin-top: 10px;">9-25-08</div> <div style="margin-top: 10px;"> THOMAS SMITH, CLERK BEDFORD COUNTY COURTHOUSE SHELBYVILLE, TN 37160 <div style="font-size: 1.2em; margin-top: 10px;">Thomas Smith</div> <div style="margin-top: 10px;"> BY: <div style="font-size: 1.2em;">Janel Carr</div> DEPUTY CLERK </div> </div>															
NOTICE OF DISPOSITION DATE																
The disposition date of this case is twelve months from the date of filing. The case must be resolved or set for trial by this date or it will be dismissed by the Court for failure to prosecute pursuant to T.R.C.P. 41.02 if you think the case will require more than one year to resolve or set for trial, you must send a letter to the Clerk of Circuit Court at the earliest practicable date asking for an extension of the disposition date and stating your reasons. Extensions will be granted only when exceptional circumstances exist.																
TO THE SHERIFF: Please execute this summons and make the return within thirty days of issuance as provided by law.	DATE RECEIVED: <div style="text-align: center; margin-top: 20px;">SHERIFF</div>															
*** Submit one original plus one copy for each defendant to be served. (This summons is issued pursuant to Rule 4 of the Tennessee Rules of Civil Procedure.)																



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-1131

October 02, 2008

Pennsylvania Life Insurance Co.
2908 Poston Avenue, % C S C
Nashville, TN 37203
NAIC # 67660

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7008 1830 0000 6979 7225
Cashier # 5426

Re: Belinda Bush Frazier V. Pennsylvania Life Insurance Co.

Docket # 11668

To Whom It May Concern:

We are enclosing herewith a document that has been served on this department on your behalf in connection with the above-styled matter.

I hereby make oath that the attached Breach Of Contract Complaint was served on me on September 29, 2008 by Belinda Bush Frazier pursuant to Tenn. Code Ann. § 56-2-504 or § 56-2-506. A copy of this document is being sent to the Circuit Court of Bedford County, TN.

Brenda C. Meade
Designated Agent
Service of Process

Enclosures

cc: Circuit Court Clerk
Bedford County
One Public Square, Rm 200
Shelbyville, Tn 37160

Service of Process 615.532.5260